

ENVIRONMENTAL QUALITY

CHAPTER 24

RECLAMATION

Sub-Chapter 11

Strip and Underground Mine Reclamation Act:
Bonding, Insurance, Reporting, and Special Areas

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Sub-Chapter 11

Strip and Underground Mine Reclamation Act:
Bonding, Insurance, Reporting, and Special Areas

17.24.1101 BONDING: DEFINITIONS For purposes of this rule, the following definitions apply:

(1) "Surety bond" means an indemnity agreement in a sum certain payable to the department executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in Montana.

(2) "Collateral bond" means an indemnity agreement in a sum certain payable to the department executed by the permittee and which is supported by the deposit with the department of cash, negotiable bonds of the United States, state or municipalities, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.1102 BONDING: DETERMINATION OF BOND AMOUNT The standard applied by the department in determining the amount of performance bond is the estimated cost to the department if it had to perform the reclamation, restoration, and abatement work required of an operator or a prospecting permittee under the Act, the rules adopted thereunder, and the permit. This amount is based on, but not limited to:

(1) the estimated costs submitted by the permittee in accordance with ARM 17.24.313 and, if applicable, costs estimated by using current machinery production handbooks and publications or other documented costs acceptable to the department;

(2) the additional estimated costs to the department which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work;

(3) all additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this rule;

(4) an additional amount based on factors of cost changes during the preceding 5 years for the types of activities associated with the reclamation to be performed; and

(5) such other cost information as may be required by or available to the department. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p.

725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.1103 BONDING: PERIOD OF RESPONSIBILITY FOR ALTERNATE REVEGETATION IS REPEALED (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852; REP, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.1104 BONDING: ADJUSTMENT OF AMOUNT OF BOND (1) The amount of the performance bond must be increased, as required by the department, as the acreage in the permit area increases, methods of mining operation change, standards of reclamation change or when the cost of future reclamation, restoration or abatement work increases. The department shall notify the permittee of any proposed bond increase and provide the permittee an opportunity for an informal conference on the proposal. The department shall review each outstanding performance bond at the time that permit reviews are conducted under ARM 17.24.414 through 17.24.416 and reevaluate those performance bonds in accordance with the standards in ARM 17.24.1102.

(2) When subsidence-related material damage to land, structures, or facilities protected under ARM 17.24.911(7)(a) through (c) occurs, or when contamination, diminution, or interruption to a domestic water supply protected under ARM 17.24.903(2) occurs as a result of underground mining activities, the department shall require the operator to obtain additional performance bond in the amount of the estimated cost of the repairs if the operator will be repairing damage, or in the amount of the decrease in value if the operator will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the operator will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The department may extend the 90-day time frame, not to exceed one year, if the operator demonstrates and the department finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes affecting the protected water supply have occurred, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of a protected water supply.

(3) A permittee may request reduction of the required performance bond amount upon submission of evidence to the department proving that the permittee's method of operation or other circumstances not related to the completion of reclamation work will reduce the maximum estimated cost to the department to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. Bond reductions which involve undisturbed land, disturbed land previously released from reclamation liability in accordance with ARM 17.24.1111 through 17.24.1115 and 17.24.1116(6), or revision of the cost estimate of reclamation are not considered bond release subject to procedures of ARM 17.24.1111. Any other request to reduce a performance bond must be considered as a request for partial bond release in accordance with the procedures of ARM 17.24.1111 through 17.24.1116.

(4) For bond adjustment requests on undisturbed land, the permittee shall submit a map of the area in question and shall revise the appropriate active permit maps. The department shall then conduct an inspection of the proposed area before responding to such requests.

(5) The amount of disturbance within a permit area must not exceed the amount bonded for. (History: 82-4-204, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1105 BONDING: FORM OF BOND The form for the performance bond must be as provided by the department. The department shall allow for either:

(1) a surety bond; or

(2) a collateral bond. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.1106 BONDING: TERMS AND CONDITIONS OF BOND (1) In addition to the requirements of 82-4-223, MCA, surety bonds must be subject to the following requirements:

(a) the department may not accept surety bonds from a surety company for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided in (1)(b);

(b) the department may not accept surety bonds from a surety company that is not listed in the U.S. department of the treasury's listing of approved sureties (Circular 570); and

(c) the surety bond must provide a mechanism for the surety company to give prompt notice to the department and the permittee of any action alleging bankruptcy or insolvency of the surety or the permittee, or violation that would result in suspension or revocation of the license of the surety. (History: 82-4-204, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1107 BONDING: INCAPACITY OF SURETY (1) Upon the incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage, and shall promptly notify the department in the manner described in the bond. The department, upon notification received through the procedures of this rule or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of ARM 17.24.522 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1108 BONDING: CERTIFICATES OF DEPOSIT (1) The department may not accept an individual certificate for a denomination in excess of \$100,000, or maximum insurable amount as determined by the federal deposit insurance corporation, the federal savings and loan insurance corporation, or the national credit union administration.

(2) The department may only accept automatically renewable certificates of deposit issued by a bank insured by the federal deposit insurance corporation or a credit union insured by the national credit union administration.

(3) The department shall require the applicant to deposit sufficient amounts of certificates of deposit, to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by ARM 17.24.1102.

(4) The department shall require that each certificate of deposit be made payable to or assigned to the department, both in writing and in the records of the bank issuing the certificate. The department shall require banks or credit unions issuing these certificates to waive all rights of setoff or liens against these certificates. (History: 82-4-204, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 2768, Eff. 12/3/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1109 BONDING: LETTERS OF CREDIT (1) Letters of credit are subject to the following conditions:

(a) The letter must be issued by a bank organized or authorized to do business in the United States.

(b) The letter must be irrevocable prior to a release by the department in accordance with ARM 17.24.1111.

(c) The letter must be payable to the department in part or in full upon demand and receipt from the department of a notice of forfeiture issued in accordance with ARM 17.24.1117.

(d) The letter must not be for an amount in excess of 10% of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant for the most recent annual reporting period.

(e) Using the balance sheet referenced in (1)(d) and a certified income and revenue sheet, the bank must meet the three following criteria:

(i) the bank must be earning at least a 1% return on total assets (net income/total assets = 0.01 or more);

(ii) the bank must be earning at least a 10% return on equity (net income/total stockholders equity = 0.1 or more); and

(iii) capital or stockholders' equity must be at least 5.5% of total assets ((total stockholders equity [shareholders equity + capital surplus + retained earnings])/total assets = 0.055 or more).

(f) Under a general financial health category, from either Sheshunoff Information Services, Moody's (Mergent Ratings Service) or Standard and Poor's, the bank must have a b+ or better rating for the current and previous two quarters.

(g) The bank's qualifications must be reviewed yearly prior to the time the letter of credit is renewed.

(h) The department may not accept letters of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation.

(i) The department may provide in the indemnity agreement that the amount must be confessed to judgment upon forfeiture, if this procedure is authorized by state law.

(j) The department shall provide that:

(i) the bank shall give prompt notice to the permittee and the department of any notice received or action filed alleging the insolvency or bankruptcy of the bank or permittee, or alleging any violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business;

(ii) in the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, the bank shall immediately give notice to the permittee and the department; and

(iii) upon the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, or upon the inability of a bank to fulfill its obligation under the letter of credit for any reason, the permittee must be deemed to be without performance bond coverage and shall promptly notify the department. Upon notification received through the procedures of (a) and (b) or from the permittee, the department shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of ARM 17.24.522 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted. (History: 82-4-204, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1110 BONDING: REPLACEMENT OF BOND (1) The department may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds if the liability that has accrued against the permittee on the permit area is transferred to such replacement bonds.

(2) The department may not release existing performance bonds until the permittee has submitted and the department has approved acceptable replacement performance bonds. A replacement of performance bonds pursuant to this rule does not constitute a release of bond under ARM 17.24.1111. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1111 BONDING: BOND RELEASE APPLICATION CONTENTS

(1) The permittee or any person authorized to act on his behalf may file an application with the department for release of all or part of the performance bond liability applicable to a particular permit after all reclamation, restoration and abatement work in a reclamation phase as defined in ARM 17.24.1116 has been completed on the entire permit area or on an area approved under 82-4-223, MCA, for the incremental filing for and release of bond liability.

(2) Applications must be filed at times or seasons that allow the department to evaluate properly the reclamation operations alleged to have been completed.

(3) The application must include copies of letters sent to adjoining property owners, surface owners, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area, notifying them of the permittee's intention to seek release of performance bond(s). These letters must be sent before the permittee files the application for release.

(4) Each application for partial or full bond release must include a notarized statement which certifies that all applicable reclamation requirements have been achieved in accordance with the Act, the rules, and the approved reclamation plan.

(5) Within 30 days after filing the application for release, the permittee shall submit proof of publication of the advertisement required by ARM 17.24.1112. Such proof of publication is considered part of the bond release application.

(6) Applicants for prospecting bond release shall comply with ARM 17.24.1017. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.1112 BONDING: ADVERTISEMENT OF RELEASE APPLICATIONS AND RECEIPT OF OBJECTIONS

(1) At the time of filing an application for bond release, the permittee shall advertise the filing of the application in a newspaper of general circulation in the locality of the permit area. The advertisement must:

(a) be placed in the newspaper at least once a week for 4 consecutive weeks;

(b) show the name of the permittee and the number and date of issuance or renewal of the permit;

(c) show the precise location and the number of acres of the lands subject to the application;

(d) show the total amount of bond in effect for the permit area and the amount for which release is sought;

(e) summarize the reclamation, restoration or abatement work done, including, but not limited to backstowing or mine sealing, if applicable, and give the dates of completion of that work;

(f) identify the portion of bond release, as described in ARM 17.24.1116, applied for;

(g) describe the reclamation results achieved, as they relate to compliance with the Act, the rules adopted thereunder, and the approved mining and reclamation plan and permit; and

(h) state that written comments, objections, and requests for public hearing or informal conference may be submitted to the department by any affected person, and provide the address of the department and the closing date by which comments, objections, and requests must be received.

(2) Written objections to the proposed bond release, requests for an informal conference, and requests for public hearing may be filed with the department by any affected person within 30 days following the last advertisement of the filing of the application. For the purpose of this rule, an affected person is:

(a) a person with a valid legal interest which might be adversely affected by bond release; or

(b) the responsible officer or head of any federal, state or local government agency that:

(i) has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved, or

(ii) is authorized to develop and enforce environmental standards with respect to strip or underground mining operations. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.1113 BONDING: INSPECTION OF SITE AND PUBLIC HEARING OR INFORMAL CONFERENCE (1) Within 30 days, weather permitting, of receiving a complete bond release request pursuant to 82-4-232(6)(a), MCA, the department shall inspect and evaluate the reclamation work. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the department in making the bond release inspection. Upon request of any person described in ARM 17.24.1112(2), the department may arrange with the permittee to allow that person access to the permit area for the purpose of gathering information relevant to the proceeding.

(2) The department shall schedule a public hearing if written objections are filed and a public hearing is requested within 30 days of the last publication of notice of application. The public hearing must be held in the locality of the permit area for which bond release is sought.

(a) Notice of a public hearing must be published in the Montana Administrative Register and in a newspaper of general circulation in the locality of the hearing at least 2 weeks before the date of the hearing.

(b) The public hearing must be held within 30 days from the date of the notice.

(c) The requirements of the Montana Administrative Procedure Act do not apply to the conduct of the public hearing.

(d) An electronic or stenographic record must be made of the hearing and the record maintained for access by the parties, until final release of the bond, unless recording is waived by all of the parties to the hearing.

(e) Without prejudice to the rights of an objector or the applicant, the department may hold an informal conference to resolve written objections. The department shall make a record of the informal conference unless the record is waived by all parties. The record must be accessible to all parties. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1114 BONDING: DEPARTMENTAL REVIEW AND DECISION ON BOND RELEASE APPLICATION (1) The department shall consider, during inspection, evaluation, informal conference, hearing and decision:

(a) whether the permittee has met the criteria for release of the bond;

(b) the degree of difficulty in completing any remaining reclamation, restoration or abatement work; and

(c) whether pollution of surface and subsurface water is occurring, the probability of future pollution or the continuance of any present pollution, and the estimated cost of abating any pollution.

(2) If no informal conference or public hearing has been held under ARM 17.24.1113, the department shall notify the permittee, the surety, or other persons with an interest in the bond collateral who have requested notification of actions pursuant to the bond at the time the collateral was offered, and persons who filed objections of its decision to release or not to release all or part of the performance bond or deposit. This decision must be submitted, in writing, within 60 days of filing of the bond release application.

(3) If there has been an informal conference or a public hearing held under ARM 17.24.1113, the notification of the decision must be made to persons listed in (2) of this rule and the parties to the conference or hearing within 30 days after conclusion of the conference or hearing. When both an informal conference and a public hearing have been held, the notification must be made within 30 days after the last proceeding.

(4) The notice of the decision must state the reasons for the decision and, if the application is denied in whole or in part, must recommend any corrective actions necessary to secure the release.

(5) The department may not release the bond until it has given the town or city in which the permit area is located, at least 30 days notice of the release by certified mail. If the permit area is not located in a town or city, notice must be sent to the county in which the permit area is located. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1115 BONDING: HEARING ON BOND RELEASE DECISION

(1) Following receipt of the decision of the department under ARM 17.24.1114, the permittee or any affected person may request a hearing on the reasons for that decision. Requests for hearings must be filed within 30 days after the permittee and other parties are notified of the decision of the department.

(2) The department shall inform the permittee, local government, and any objecting party of the time, date, and place of the hearing and publish notice of the hearing in the Montana Administrative Register, and in a newspaper of general circulation in the locality of the permit area twice a week for 2 consecutive weeks before the hearing. The hearing must be adjudicatory in nature and be held within a reasonable time after the receipt of the request in the town or city nearest the permit area, or in Helena at the option of the objector. The department may subpoena witnesses and printed materials and compel the attendance of witnesses and production of the materials at the hearing. A verbatim record of the hearing must be made and the transcript made available on the motion of any party or by order of the department. The decision of the hearing authority must be made within 30 days of the hearing. Parties seeking to reverse the decision or any part of the decision of the department that is the subject of the hearing shall have the burden of presenting a preponderance of evidence, to persuade the hearing authority that the decision cannot be supported by the reasons given in notification of the department's decision. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1116 BONDING: CRITERIA AND SCHEDULE FOR RELEASE OF BOND

(1) The department may not release any portion of the performance bond until it finds that the permittee has met the requirements of the applicable reclamation phase as defined in this rule. The department may release portions of the performance bond applicable to a permit following completion of reclamation phases on the entire permit area or on incremental areas within the permit area.

(2) Release of any portion of the performance bond does not relieve the operator of liability for any corrective action necessary to comply with the Act, subchapters 3 through 13 of this chapter, and the permit until final bond release.

(3) Subject to the limitations of (5) and (6) of this rule, the maximum portion of the performance bond that may be released at any time on applicable areas is:

(a) 60% if reclamation phase I has been completed;

(b) the amount associated with soil replacement activities, if reclamation phase II has been completed;

(c) the amount associated with revegetation activities, if reclamation phase III has been completed; and

(d) the remaining portion of the performance bond, if reclamation phase IV has been completed.

(4) Acreage may be released from the permit area only after reclamation phase IV has been completed on applicable areas.

(5) The department may not release any portion of a performance bond applicable to a permit if such release would reduce the total remaining performance bond to an amount less than that necessary for the department to complete the approved reclamation plan, achieve compliance with the requirements of the Act, the rules adopted thereunder, and the permit, and abate any significant environmental harm to air, water, or land resources, or danger to the public health and safety which might occur prior to the release of all lands from the permit area. In all cases, the department shall retain performance bond in the amount of not less than \$200 per acre until reclamation phase IV (final) bond release has been granted.

(6) For the purposes of these rules, reclamation phases are as follows:

(a) reclamation phase I is deemed to have been completed when the permittee completes backfilling, regrading, and drainage control in accordance with the approved reclamation plan and when all drill holes that are not approved to be retained as monitoring wells or that were not completely mined have been plugged in accordance with ARM 17.24.1005;

(b) reclamation phase II is deemed to have been completed when:

(i) soil replacement and spoil and soil tillage have been completed in accordance with the approved reclamation plan;

(ii) at least two growing seasons (spring and summer for two consecutive years) have elapsed since seeding or planting of the affected area;

(iii) vegetation is establishing that is consistent with the species composition, cover, production, density, diversity, and effectiveness required by the revegetation criteria in ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, 17.24.731 and 17.24.815 and the approved postmining land use;

(iv) soils are protected from accelerated erosion by the established vegetation;

(v) noxious weeds are controlled; and

(vi) with respect to prime farmlands, production has been returned to the level required by ARM 17.24.815.

(c) reclamation phase III is deemed to have been completed when:

(i) the applicable responsibility period (which commences with the completion of any reclamation treatments as defined in ARM 17.24.725) has expired and the revegetation criteria in ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, 17.24.731, and 17.24.815, as applicable to and consistent with the approved postmining land use are met;

(ii) a stable landscape has been established consistent with the approved postmining land use;

(iii) the lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of ARM 17.24.633 or the permit; and

(iv) as applicable, the provisions of a plan approved by the department for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the department; or

(v) the lands meet the special conditions provided in 82-4-235(3)(a), MCA;

(d) reclamation phase IV is deemed to have been completed when:

(i) all disturbed lands within any designated drainage basin have been reclaimed in accordance with the phase I, II, and III requirements;

(ii) fish and wildlife habitats and related environmental values have been restored, reclaimed, or protected in accordance with the Act, the rules, and the approved permit;

(iii) with respect to the hydrologic balance, disturbance has been minimized and offsite material damage has been prevented in accordance with the Act, the rules, and the approved permit;

(iv) alternative water sources to replace water supplies that have been adversely affected by mining and reclamation operations have been developed and are functional in accordance with the Act, the rules, and the approved permit;

(v) the reestablishment of essential hydrologic functions and agricultural productivity on alluvial valley floors has been achieved;

(vi) implementation of any alternative land use plan approved pursuant to ARM 17.24.821 and 17.24.823 has been successfully achieved; and

(vii) all other reclamation requirements of the Act, rules, and the permit have been met.

(7) Information from annual reports and monitoring data, generated pursuant to ARM 17.24.645, 17.24.646, 17.24.723, and 17.24.1129, and from department inspection reports may be used or referenced to support applications for bond release.

(8) Following final bond release, the department shall reassert jurisdiction under the Act and this chapter if it is demonstrated that the bond release or statement of reasons made pursuant to ARM 17.24.1114(4) was based upon fraud, collusion, or misrepresentation of a material fact. (History: 82-4-204, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1994 MAR p. 2957, Eff. 11/11/94; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1116A REASSERTION OF JURISDICTION IS REPEALED (History: 82-4-205, MCA; IMP, 82-4-235, MCA; NEW, 1994 MAR p. 2957, Eff. 11/11/94; TRANS, from DSL, 1996 MAR p. 3042; REP, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.1117 BONDING: PROCEDURE FOR FORFEITURE In the event forfeiture of the bond is necessary, the department shall:

(1) send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if applicable, of the department's determination to forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited;

(2) advise the permittee and surety, if applicable, of any conditions under which forfeiture may be avoided, including, but not limited to:

(a) agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule that meets the conditions of the permit, the reclamation plan, and the regulatory program, and a demonstration that such party has the ability to satisfy the conditions; or

(b) completion by the surety of the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the department approves partial release under ARM 17.24.1116, no surety liability may be released until successful completion of all reclamation under the terms of the permit, including applicable responsibility periods; and

(3) in the event forfeiture cannot be or is not avoided under (2), proceed in an action for collection on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this rule, for the amount forfeited. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1118 BONDING: EFFECT OF FORFEITURE (1) The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, is a final decision by the department.

(2) The department may forfeit any or all bond deposited for an entire permit area. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single operation must extend to the entire permit area.

(3) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the permittee shall be liable for remaining costs. The department may complete or authorize completion of reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1119 BONDING: CRITERIA FOR FORFEITURE (1) A bond must be forfeited if the department finds that:

(a) the permittee has violated any of the terms or conditions of the bond;

(b) the permittee has failed to conduct the strip or underground mining and reclamation operations in accordance with the Act, the rules adopted pursuant thereto, or the conditions of the permit, within the time required by the Act, the rules adopted pursuant thereto, or the permit;

(c) the permit for the area under bond has been revoked, unless the operator assumes liability for completion of reclamation work; or

(d) the permittee has failed to comply with a compliance schedule approved by the department.

(2) A bond may be forfeited, if the department finds that:

(a) the permittee has become insolvent, failed in business, been adjudicated bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by any court;

(b) a creditor of the permittee has attached or executed a judgment against the permittee's equipment or materials at the permit area or on the collateral pledged to the department; or

(c) the permittee cannot demonstrate or prove the ability to continue to operate in compliance with the Act, the rules adopted pursuant thereto and the permit. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1120 BONDING: DETERMINATION OF FORFEITURE AMOUNT The department shall either:

(1) determine the amount of the bond to be forfeited on the basis of the estimated cost to the department or its contractor to complete the reclamation plan and other regulatory requirements in accordance with the Act, the rules adopted pursuant thereto, and the requirements of the permit; or

(2) forfeit the entire amount of the bond for which liability is outstanding and deposit the proceeds thereof in an interest-bearing escrow account for use in the payment of all costs and administrative expenses associated with the conduct of reclamation, restoration or abatement activities by the department. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, 82-4-232, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1121 BONDING: STATE AGENCIES AND POLITICAL SUBDIVISIONS (1) The department may require agencies and political subdivisions of the state to file bonds for prospecting operations other than test pit prospecting operations.

(2) Agencies and political subdivisions of the state shall file a bond that meets the requirements of 82-4-223, MCA, and ARM 17.24.1101 through 17.24.1120, before the department may issue a mining permit or test pit prospecting permit. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-223, MCA; NEW, 1980 MAR p. 2875, Eff. 10/31/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1122 NOTICE OF ACTION ON COLLATERAL BOND (1) The department shall give advanced notice of any action pursuant to a collateral bond to each person who has an interest in the collateral and who, in writing at the time the collateral was offered, requested notice of future action. (History: 82-4-205, MCA; IMP, 82-4-232, MCA; NEW, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

Rules 17.24.1123 and 17.24.1124 reserved

17.24.1125 LIABILITY INSURANCE (1) Minimum insurance coverage to comply with 82-4-222(5), MCA, is \$300,000 bodily injury coverage for each occurrence and \$500,000 in the aggregate and \$300,000 property damage for each occurrence and \$500,000 in aggregate.

(2) The policy must be maintained in full force during the life of the permit or any renewal thereof and until final bond release on the permit area.

(3) The policy must include a rider requiring that the insurer notify the department whenever substantive changes are made in the policy, including any termination or failure to renew. (History: 82-4-204, MCA; IMP, 82-4-231, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

Rules 17.24.1126 through 17.24.1128 reserved

17.24.1129 ANNUAL REPORT (1) Each operator shall file copies of an annual report with the department within a time period specified in 82-4-237, MCA, until such time as full bond is released.

(2) The annual report must include:

(a) the name and address of the operator and the permit number;

(b) the exact number of acres of land affected by the operation during the preceding year and cumulatively;

(c) the extent of backfilling and grading performed during the preceding year and cumulatively;

(d) the extent of vegetative reclamation (seeding or planting) performed during the preceding year (in narrative and map form), including:

(i) the type of planting or seeding;

(ii) the mixtures and amounts seeded;

(iii) the species, location, and method of planting for site or species specific plantings;

(iv) the date of seeding or planting;

(v) the area of land planted;

(vi) cumulative areas reseeded to date; and

(vii) cumulative acres of each phase of bond released to date;

(e) vegetation monitoring data and analysis pursuant to ARM 17.24.723;

(f) replaced soil depths and a map of all sites sampled;

(g) an inspection map depicting all approved surface features, as required by the department, in or associated with the permit area, reproduced at a scale applicable for field use;

(h) a summary of actions taken to comply with state weed control laws;

(i) an updated cultural resource management table, including a list of sites mitigated and disturbed in the preceding year and sites to be mitigated and disturbed in the coming year; and

(j) any other relevant information required by the department.

(3) Maps containing information listed in ARM 17.24.305(1) must be certified in accordance with ARM 17.24.305. (History: 82-4-204, MCA; IMP, 82-4-237, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1990 MAR p. 936, Eff. 5/18/90; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

Rule 17.24.1130 reserved

17.24.1131 PROTECTION OF PARKS, HISTORIC SITES, AND OTHER LANDS (1) In addition to those areas upon which strip or underground mining is specifically prohibited pursuant to 82-4-227(13), MCA, subject to valid existing rights, no strip or underground coal mining may be conducted, unless the operation existed on August 3, 1977:

(a) on any lands upon which the mining would adversely affect any publicly owned park or places included in the national register of historic sites unless mining thereof is approved jointly by the department and the federal, state, or local agency with jurisdiction over the park or historic sites;

(b) on any lands within the national system of trails.
(History: 82-4-204, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1132 AREAS UPON WHICH COAL MINING IS PROHIBITED: DEFINITIONS AND STANDARD FOR MEASUREMENT OF DISTANCES (1) For the purpose of 82-4-227(13), MCA, the following definitions apply:

(a) "valid existing rights" has the same definition as the definition of the term contained in 30 CFR 761.5 (2003), which is incorporated by reference into this rule. Copies of 30 CFR 761.5 may be obtained from the department at its Helena office.

(b) "valid existing rights" does not mean mere expectation of a right to conduct strip or underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal prospecting permits or licenses, applications or bids for leases, or where a person has only applied for a state or federal permit;

(c) "occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation;

(d) "public building" means any structure that is owned or leased by a public agency and used principally for public business, meetings, or other group gatherings;

(e) "community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public service, including, but not limited to, water supply, power generation or sewage treatment;

(f) "public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use;

(g) "public road" means a street, road, or highway, and any related structure, that has been or will be built and maintained with appropriated funds of the United States; that has been or will be built and maintained with funds of the state of Montana or any political subdivision thereof; that has been or will be dedicated to public use; or that has been acquired by eminent domain or adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(h) "cemetery" means any area of land where human bodies are interred.

(2) For purposes of 82-4-227(7), MCA, all distances must be measured horizontally. (History: 82-4-204, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1133 AREAS UPON WHICH COAL MINING IS PROHIBITED:
PROCEDURES FOR DETERMINATION

(1) Upon receipt of an application for a strip or underground coal mining operation permit, the department shall review the application to determine whether strip or underground coal mining operations are limited or prohibited under 82-4-227(7) or (13), MCA, or ARM 17.24.1131, on the lands which would be disturbed by the proposed operation.

(2) Whenever a proposed operation would be located on any lands listed in 82-4-227(7) or (13), MCA, (except for proximity to public roads) or ARM 17.24.1131, the department shall reject the application unless:

(a) the applicant has valid existing rights for the proposed permit area; or

(b) the operation existed when the land came under the protection of 82-4-227(7) or (13), MCA, (except the proximity of public roads) or ARM 17.24.1131. This exception applies only to land within the permit area as it exists when the land comes under this protection.

(3) Procedures for submitting requests and for determining valid existing rights must be conducted in accordance with 30 CFR 761.16 (2003), which is incorporated into this rule by this reference. Copies of 30 CFR 761.16 may be obtained from the department at its Helena office.

(4) If the department is unable to determine whether the proposed operation is located within the boundaries or distances described in 82-4-227(7) or (13), MCA, or ARM 17.24.1131, of any of the lands described in the same provisions of the Act and rules, the department shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances, along with a request for response within 30 days. The department shall notify the national park service or the fish and wildlife service of any request for determination of valid existing rights pertaining to areas within their boundaries or areas under their jurisdiction and shall grant them 30 days from receipt of the notice to respond. The department, upon request by the appropriate agency, shall grant an additional 30 days for response. If no response is received within the response period or extension, the department may make its determination based on the information it has available. (History: 82-4-204, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1134 AREAS UPON WHICH COAL MINING IS PROHIBITED: PERMISSION TO MINE NEAR PUBLIC ROAD Whenever a proposed mining operation is to be conducted within 100 feet measured horizontally to the outside right-of-way line of any public road (except where mine access roads or haul roads join such right-of-way line), the department may permit mining to occur within 100 feet of the road if:

(1) the applicant obtains the necessary approvals of the authority with jurisdiction over the public road;

(2) a notice of a public hearing in a newspaper of general circulation in the affected locale is provided at least two weeks before the hearing;

(3) an opportunity for a public hearing at which any member of the public may participate is provided in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(4) a written finding based upon information received at the public hearing is made within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1135 AREAS UPON WHICH COAL MINING IS PROHIBITED: RELOCATION OR CLOSURE OF PUBLIC ROAD Whenever an applicant proposes to relocate or close a public road to facilitate strip or underground mining operations, the road may not be relocated or closed until:

(1) the permit authorizing the operation is granted;

(2) the applicant obtains the necessary approval from the authority with jurisdiction over the public road;

(3) a notice of a public hearing in a newspaper of general circulation in the affected locale is provided at least two weeks before the hearing;

(4) an opportunity for a public hearing at which any member of the public may participate is provided in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(5) a written finding based upon information received at the public hearing is made within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1136 AREAS UPON WHICH COAL MINING IS PROHIBITED: WAIVER TO MINE NEAR DWELLING (1) Whenever a proposed strip or underground mining operation would be conducted within 300 feet measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver acts as consent to such operations within a closer distance of the dwelling as specified in the waiver.

(2) A valid waiver is effective against subsequent purchasers who had actual or constructive knowledge of the waiver at the time of purchase. Constructive knowledge is presumed if the waiver has been properly filed with the county clerk and recorder or if mining has proceeded to within 300 feet prior to the date of purchase. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1137 AREAS UPON WHICH COAL MINING IS PROHIBITED: CONSULTATION WITH OTHER AGENCIES (1) Whenever a proposed mining operation may adversely affect any public park or any places included on the national register of historic places, the department shall transmit to the federal, state, or local agencies with jurisdiction over or a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing a request for that agency's approval or disapproval of the operations within 30 days of receipt of the request. Upon receipt of a written request from the appropriate agency, the review period may be extended 30 days. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1138 AREAS UPON WHICH COAL MINING IS PROHIBITED: DESIGNATION PROCESS NOT AFFECTED (1) If the department determines that the proposed strip or underground coal mining operation is not prohibited under 82-4-227(7) or (13), MCA, or ARM 17.24.1131, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of strip or underground coal mining operations pursuant to ARM 17.24.1141 through 17.24.1148. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, 82-4-228, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; TRANS, from DSL, 1996 MAR p. 3042.)

Rules 17.24.1139 and 17.24.1140 reserved

17.24.1141 DESIGNATION OF LANDS UNSUITABLE: DEFINITION For purposes of 82-4-228, MCA, the following definitions apply:

(1) "Fragile lands" means geographic areas containing natural, scientific or aesthetic resources, or ecologic relationships that could be damaged or be destroyed by strip or underground coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, national natural landmark sites, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features, and areas of recreational value due to high environmental quality, and appropriate buffer zones adjacent to the boundaries of areas where strip or underground coal mining operations are prohibited under 82-4-227, MCA, and ARM 17.24.1131.

(2) "Historic lands" means historic or cultural districts, places, structures or objects, including archaeological and paleontological sites, national historic landmark sites, sites listed on or eligible for listing on a state or national register of historic places, sites having religious or cultural significance to Native Americans or religious groups or sites for which historic designation is pending.

(3) "Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of strip or underground coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

(4) "Substantial legal and financial commitments in a strip or underground coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example is an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1994 MAR p. 2957, Eff. 11/11/94; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1142 DESIGNATION OF LANDS UNSUITABLE: EXEMPTIONS The requirements of ARM 17.24.1141 through 17.24.1148 do not apply to:

- (1) lands on which strip or underground coal mining operations were being conducted on August 3, 1977;
- (2) lands covered by a permit issued under the Act; or
- (3) lands where substantial legal and financial commitments in strip or underground coal mining operations were in existence prior to January 4, 1977. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1143 DESIGNATION OF LANDS UNSUITABLE: PROSPECTING ON DESIGNATED LANDS (1) Prospecting operations on any lands designated unsuitable for strip or underground mining operations, pursuant to 82-4-228, MCA, and this subchapter, must be approved by the department under subchapter 10 and must insure that prospecting does not interfere with any value for which the area has been designated unsuitable for strip or underground coal mining. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.1144 DESIGNATION OF LANDS UNSUITABLE: PETITION FOR DESIGNATION OR TERMINATION OF DESIGNATION (1) Any person having an interest which is or may be adversely affected has the right to petition the department to have an area designated as unsuitable for strip or underground coal mining operations, or to have an existing designation terminated. A person having an interest which is or may be adversely affected shall demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

(2) A petition to designate lands unsuitable must be in affidavit form. The only information that a petitioner need provide is:

(a) identification of the petition area, including its location and size, and a US geological survey topographic map outlining the perimeter of the petition area;

(b) allegations of facts and supporting evidence covering all lands in the petition area, that tend to establish that the area or a designated portion thereof is unsuitable for all or certain types of strip or underground coal mining operations, pursuant to specific criteria of 82-4-228, MCA, assuming that contemporary mining practices required under the Act would be followed if the area were to be mined. Each of the allegations of fact must be specific as to the type of mining operation, if known, and the portion of the petition area to which the

allegation applies. Each allegation must be supported by evidence that tends to establish its validity;

(c) a description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interests;

(d) the petitioner's name, address and telephone number; and

(e) identification of the petitioner's interest which is or may be adversely affected, including a statement demonstrating how the petitioner satisfies the requirements of (1) of this rule.

(3) A petition for termination of a designation must be in affidavit form. The only information that a petitioner need provide is:

(a) identification of the petition area, including its location and size and a US geological survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;

(b) allegations of facts, with supporting evidence covering all lands for which the termination is proposed. Each of the allegations of fact must be specific as to the type of mining operation, if any, and to portions of the petition area and petitioner's interests to which the allegation applies. The allegations must be supported by evidence, not contained in the record of the designation proceedings, that tends to establish the validity of the allegations for the mining operation or portion of the petition area, assuming that contemporary mining practices required under the Act would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence must also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following basis:

(i) the nature or abundance of the protected resource or condition or other basis of the designation, if the designation was based on criteria found in 82-4-228(2)(b), MCA;

(ii) reclamation now being technologically and economically feasible if the designation was based on the criteria found in 82-4-228(2)(a), MCA; or

(iii) the resources or condition not being affected by strip or underground coal mining operations, or in the case of land use plans, not being incompatible with strip or underground coal mining operations during and after mining, if the designation was based on the criteria found in 82-4-228(2)(b), MCA;

(c) the petitioner's name, address and telephone number; and

(d) identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation.

(4) The department may request that the petitioner provide other information that is readily available to supplement petitions under (2) or (3) of this rule. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1145 DESIGNATION OF LANDS UNSUITABLE: NOTICE AND ACTION ON PETITION (1)(a) Within 30 days of receipt of a petition, the department shall notify the petitioner by certified mail whether or not the petition is complete under ARM 17.24.1144(2) or (3).

(b) The department shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the department finds there are no identified coal resources in that area, it shall provide the petitioner with a statement of the findings.

(c) Once the requirements of ARM 17.24.1144 are met, no party bears any burden of proof, but each accepted petition must be considered and acted upon by the department pursuant to the procedures of this rule.

(d) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the department shall determine if the new petition presents new allegations of facts. If the petition does not contain new allegations of facts, the department may not consider the petition and shall provide the petitioner with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

(e) If the department determines that the petition or a portion thereof is incomplete or frivolous, it shall provide the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegation of harm lacks serious merit. The department is not required to process a petition that is incomplete, frivolous, or filed by a person who does not have an interest that is or may be adversely affected.

(f) The department shall notify the person who submits a petition of any application for a permit received that contains a proposal to include any area covered by the petition.

(g) The receipt of any petition after the close of the public comment period on a permit application relating to the same mine plan area does not prevent the department from issuing a decision on that permit application. The department may

refuse to process any petition received thereafter and shall provide the petitioner with a statement why the department cannot consider the petition. For the purposes of this rule, "close of the public comment period" means at the close of any informal conference held under ARM 17.24.403, or, if no conference is requested, the close of the period for filing written comments and objections under 17.24.402.

(2)(a) Promptly after receipt of the petition, the department shall notify the general public that a petition has been filed. The notice must be a newspaper advertisement in the newspaper providing the broadest circulation in the locale of the petition area. The notice must be published once a week for 2 consecutive weeks. A similar notice must be placed in the Montana Administrative Register. The notice must include a request for submission of relevant information.

(b) Within 3 weeks after the determination that a petition is complete, the department shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, and other persons known to the department to have an interest in the property.

(c) Promptly after the determination has been made that a petition is complete, the department shall request submissions of relevant information from the general public by a newspaper advertisement placed once a week for 2 consecutive weeks in the newspaper of broadest circulation in the locale of the petition area, and in the Montana Administrative Register.

(3) Until 3 days before the department holds a hearing under ARM 17.24.1146, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.

(4) Beginning immediately after a complete petition is filed, the department shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the department. The department shall make the record available for public inspection free of charge and for copying at reasonable cost during all normal business hours at all its offices or, upon request, at a county courthouse or library. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1146 DESIGNATION OF LANDS UNSUITABLE: HEARINGS ON PETITION (1) Within 10 months after receipt of a complete petition, the department shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The department may subpoena witnesses as necessary. The department shall allow cross-examination of expert witnesses, but other witnesses must not be cross-examined. The department shall make a verbatim transcript of the hearing.

(2)(a) The department shall give notice of the date, time, and location of the hearing to:

(i) local, state, and federal agencies which may have an interest in the decision on the petition;

(ii) the petitioner and the intervenors; and

(iii) any person with an ownership or other interest known to the department in the area covered by the petition.

(b) Notice of the hearing must be sent by certified mail and postmarked not less than 30 days before the scheduled date of the hearing.

(3) The department shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin between 4 and 5 weeks before the scheduled date of the public hearing.

(4) The department may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(5) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1147 DESIGNATION OF LANDS UNSUITABLE: DECISION ON PETITION (1) In reaching its decision, the department shall use:

(a) the information contained in the data base and inventory system provided for in ARM 17.24.1148;

(b) information provided by other governmental agencies;

(c) the detailed statement prepared under 82-4-228(3), MCA; and

(d) any other relevant information submitted during the comment period.

(2) A final written decision must be issued by the department including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete

petition. The department shall simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding, and to the federal coal regulatory agency. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1148 DESIGNATION OF LANDS UNSUITABLE: DATA BASE AND INVENTORY SYSTEM (1) The department shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(2) The department shall include in the system information relevant to the criteria in 82-4-228(2), MCA, including, but not limited to, information received from the United States fish and wildlife service, the department of fish, wildlife, and parks, and the state historic preservation officer.

(3) The department shall add to the data base and inventory system information:

(a) on potential coal resources of the state, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the department to prepare the statements required by 82-4-228(3), MCA; and

(b) that becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

(4) The department shall:

(a) make the information and data base system available to the public for inspection free of charge and for copying at reasonable cost; and

(b) provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of strip or underground coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

(5) The department shall maintain a map of areas designated as unsuitable for all or certain types of strip or underground coal mining operations.

(6) The department shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

